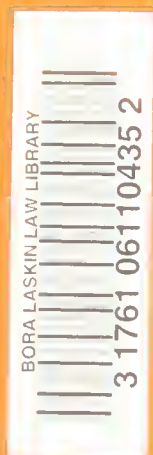




UNIVERSITY OF
TORONTO
FACULTY OF LAW



ADMINISTRATIVE LAW

VOLUME III

Freya Kristjanson & Leslie McIntosh

Spring 2010

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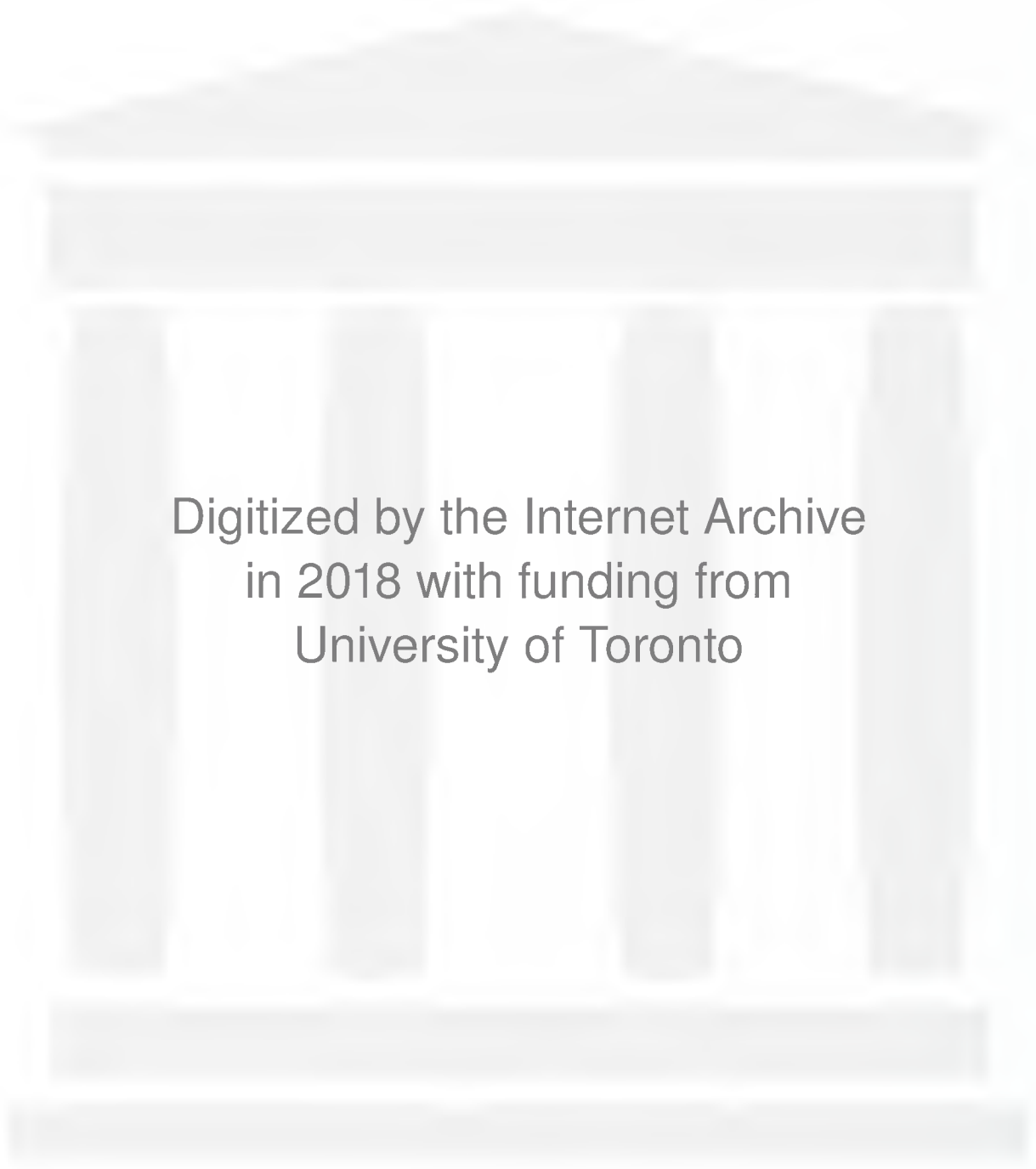
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ADMINISTRATIVE LAW

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ADMINISTRATIVE LAW SPRING SEMESTER 2010

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Overview

Administrative law is the study of how governments and administrative tribunals may affect the rights and interests of individuals and groups, as well as the role of the courts in superintending administrative action. Administrative law issues arise in a diverse range of settings, including immigration and refugee law, labour law, health law, human rights law, environmental law, securities, banking and competition regulation, professional discipline, and decision-making in universities, hospitals and municipalities. The course will consider the rules and principles applicable to various kinds of decision-makers including government ministers, officials, administrative boards and tribunals, agencies and commissions. Specific topics include: the rule of law, procedural fairness considerations that govern investigation, rule-making, and adjudication by administrative agencies, the right to a hearing, independence and impartiality, the standard of review of administrative decisions, remedies for abuse of discretion, and the application of the *Charter* and constitutional principles in the administrative realm. Throughout the course the overriding questions will be: How is the public interest to be determined? How should the protection of individual and group rights and interests be balanced against the goals asserted by the administrative decision-maker?

Texts

There is case book, Kristjanson & McIntosh, *Administrative Law, 2010*. The syllabus sets out the cases. Specific readings will be assigned in class or by Blackboard postings.

Blackboard

There will be a Blackboard page for this course. Readings may be assigned by Blackboard and hand-outs may be posted on the Blackboard.

Recommended Reading

For those seeking additional readings, the following sources are recommended:

- Guy Regimbald,, *Canadian Administrative Law* (Toronto: Lexis Nexis Canada Inc., 2008, 1st ed.)
- Brown and Evans, *Judicial Review of Administrative Action* (Brown & Evans, 1998) (Canada) (Looseleaf ed.)
- MaCaulay & Sprague, *Practice and Procedure before Tribunals* (Toronto: Carswell, 1988) (Looseleaf ed.)
- Sara Blake, *Administrative Law in Canada*, (Toronto: LexisNexis, 2006, 4th ed.)

Evaluation

There will be a final, 3-hour open-book examination (100%).

Course Outline

All page references are to the 2010 Administrative Law Case Book (CB), by volume number (CB I, CB II, CB III).

CLASS #1 - TUESDAY, JANUARY 5

Introduction to Administrative Law

(no assigned readings)

CLASS #2 - THURSDAY, JANUARY 7

I. Overview: Foundations of the Modern Administrative State

1. Colleen Flood, "An Introduction to (the Effervescence of) Administrative Law, in Colleen Flood and Lorne Sossin, eds., *Administrative Law in Context* (2008, Emond Montgomery Publications Limited, Toronto, CB I, p. 1

CLASS #3 - TUESDAY, JANUARY 12

II. Overview: The Duty of Fairness – The Modern Expression

- (a) Common Law
 1. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193, CB I, p. 24
- (b) Charter
 1. *Suresh v. Canada (Minister of Citizenship and Immigration)*, (2002), 208 D.L.R. (4th) 1, paras. 113-128, CB I, p. 45

CLASS #4 - THURSDAY, JANUARY 14

III. Overview: The Rule of Law and Judicial Review of Administrative Action

- (a) *Dunsmuir v. New Brunswick*, 2008 SCC 9, CB I, p. 52

CLASS #5 - TUESDAY, JANUARY 19

IV. The Duty of Fairness

- A. Evolution of the Duty of Fairness

- (a) *Calgary Power Ltd. v. Copithorne*, [1959] S.C.R. 24, 16 D.L.R. (2d) 241, CB I, p. 114
- (b) *Nicholson v. Haldimand-Norfolk* (1979), 88 D.L.R. 671 (S.C.C.), CB I, p. 122
- (c) *Martineau v. Matsqui Inmate Disciplinary Board*, [1980] 1 S.C.R. 602, CB I, p. 129

CLASS #6 - THURSDAY, JANUARY 21

- B. Sources of Procedural Fairness - *Statutory Powers Procedure Act*
- (a) *Statutory Powers Procedure Act*, R.S.O. 1990, c.22, CB I, p. 140

CLASS #7 - TUESDAY, JANUARY 26

- C. Threshold – When Does the Duty Arise?
- (a) Rights, Privileges and Interests – Guy Regimbald, *Canadian Administrative Law* (2008, Lexis Nexis Canada Inc., 1st ed.), pp. 230-244, CB I, p. 162
- (b) No Fairness Duty: General Policy /Legislative Decision-Making
 - 1. *Canada (Attorney General) v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735, 115 D.L.R. (3d) 1 (Fed.) , CB I, p. 178
 - 2. *Authorson v. Canada (Attorney General)*, 2003 S.C.C. 39, 227 D.L.R. (4th) 385, CB I, p. 188
- (c) Legitimate Expectations
 - 3. Guy Regimbald, *Canadian Administrative Law* (2008, Lexis Nexis Canada Inc., 1st ed.), pp.288-298, CB I, p. 197
 - 4. *Khadr v. Canada (A.G.)*, 2006 F.C.J. No. 888 (F.C.A.), CB I., p. 208

CLASS #8 - THURSDAY JANUARY 28

- (a) Investigating/Advising/Recommending
 - 1. Mullan, pp. 166-170, CB I, p. 220

2. *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System- Krever Commission)*, [1997] 3 S.C.R. 440, 151 D.L.R. (4th) 1 (Fed.), para. 1, 7-9, 30-31, 34, 55-57, CB I, p. 225
3. *Masters v. Ontario* (1994), 18 O.R. (3d) 551 (Div. Ct.), 115 D.L.R. (4th) 319, CB I, p. 236

D. Procedural Rights – Elements of the Duty of Fairness

1. Hearing Stage – Oral Hearings, Public Hearings

- (a) *Khan v. University of Ottawa* (1997), 34 O.R. (3d) 535 (C.A.), CB I, p. 258
- (b) *Xwave Solutions Inc. v. Canada (Public Works & Government Services)*, (2003) 5 Admin. L.R. (4th) 280 (FCA) , CB I, p. 270.
- (c) *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, paras. 53-64, CB I, p. 277

CLASS #9 - TUESDAY, FEBRUARY 2

2. Notice and Scope of Hearing:

- (a) *Canada (CRTC) v. CTV Television Network*, [1982] 1 S.C.R. 530, CB II, p. 311
- (a) *Supermarchés Jean Labrecque Inc. v. Flamand*, [1987] 2 S.C.R. 219, CB II, p. 314
- (a) *Telecommunications Workers Union v. Canada (Radio-television and Telecommunications Commission)*, [1995] 2 S.C.R. 781, 125 D.L.R. (4th) 471, CB II, p. 324
- (b) *Canadian Pacific Railway Co. v. Vancouver (City)*, [2006] 1 S.C.R. 227, 2006 SCC 5, CB II, p. 329
- (c) *Henderson v. College of Physicians and Surgeons of Ontario*, [2003] O.J. No. 2213 (C.A.), CB II., p. 342
- (d) *Wong v. College of Traditional Chinese Medical Practitioners and Acupuncturists of British Columbia*, [2005] B.C.J. No. 2219 (C.A.) , CB II, p. 349
- (e) *SPPA*, ss. 6, 7 and 8

CLASS #10 - THURSDAY, FEBRUARY 4

E. Disclosure and Discovery

- (a) *Deloitte & Touche LLP v. Ontario (Securities Commission)*, [2003] 2 S.C.R. 713; 232 D.L.R. (4th) 1, CB II, p. 360
- (b) *Pritchard v. Ontario (Human Rights Commission)*, [2004] 1 S.C.R. 809, 238 D.L.R. (4th) 1, CB II, p. 367
- (c) *Ontario Human Rights Commission v. Dofasco* (2001), 57 O.R. (3d) 693 (C.A.), CB II, p. 370
- (d) *May v. Ferndale Institution*, [2005] 3 S.C.R., 809, paras. 89-120, CB II., p. 380
- (e) *Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38 (“Charkaoui #2”), CB II, p. 387

CLASS #11 - TUESDAY, FEBRUARY 9

F. Statutes and Regulations

- (a) *Ontario Disability Support Program Act*, S.O. 1997, c.25, Schedule B and O.Reg.222/98, as amended and O.Reg.562/05, as amended (excerpts) , CB II, p. 410
- (b) *University of Toronto Act, 1971*, S.O. 1971, c.56 and Code of Behaviour on Academic Matters (June 1, 1995) , CB II, p. 434

CLASS #12 - THURSDAY, FEBRUARY 11

G. Policies and Rules

- (a) Mullan, pp. 675-679 & 684, CB II, p. 449
- (b) *Capital Cities v. CRTC*, [1978] 2 S.C.R. 141, CB II, p. 455
- (c) *Ainsley Financial Corp. v. Ontario Securities Commission* (1994), 21 O.R. (3d) 104 (C.A.) , CB II, p. 461
- (d) *Thamotharem v. Canada (Minister of Citizenship & Immigration)*, 2007 FCA 198 (CanLII) , 60 Admin. L.R. (4th) 247, CB II, p. 465
- (e) Social Benefits Tribunal, Practice Directions, Excerpts, CB II, p. 485

READING WEEK

CLASS #13 - TUESDAY, FEBRUARY 23

H. Right to Counsel , Cross-Examination, Delay and Adjournments

1. Guy Regimbald,, *Canadian Administrative Law* (Toronto: Lexis Nexis Canada Inc., 2008, 1st ed.), pp. 266-275 and 282-288, CB II, p. 488
2. Mullan, pp. 456-462, CB II, p. 505

I. Decision on the Record and Reasons

1. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193, CB I, p. 24
2. *Kane v. University of British Columbia*, [1980] 1 S.C.R. 1105, 110 D.L.R. (3d) 311, CB II, p. 509
3. *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, [2004] 2 S.C.R. 650, 2004 SCC 48, CB II, p. 515
4. *Gray v. Ontario (Director, Disability Support Program)*, [2002] O.J. No. 1531 (QL) (CA), CB II, p. 527

CLASS #14 - THURSDAY, FEBRUARY 25

V. Bias

A. Impartiality – Personal Interest, Prejudgment, Attitudinal Bias

1. *R. v. Valente* (1985), 24 D.L.R. (4th) 161 (S.C.C.), CB II, p. 532
2. *Old St. Boniface Residents Assn. v. Winnipeg (City)* (1990), 75 D.L.R. (4th) 385 (S.C.C.), CB II, p. 549
3. *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623, 89 D.L.R. (4th) 289, CB II, p. 557
4. *Baker*, pp. 220-223, para. 45-50, CB I, p. 24

CLASS #15 - TUESDAY, MARCH 2

B. Tribunal Impartiality and Independence

1. *International Woodworkers of America, Local 2-69 v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282, 68 D.L.R. (4th) 524, CB II, p. 566
2. *C.U.P.E. v. Minister of Labour*, [2003] 1 S.C.R. 539, CB II, p. 583

CLASS #16 - THURSDAY, MARCH 4

C. Structural Independence

1. *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3, 122 D.L.R. (4th) 129, CB II, p. 609
2. *Ocean Port Hotel Ltd. v. British Columbia (Liquor Control and Licensing Branch, General Manager)*, [2001] 2 S.C.R. 781, 204 D.L.R. (4th) 33, CB II, p. 629

CLASS #17 - TUESDAY, MARCH 9

VI. Tribunal Jurisdiction - Constitution and Human Rights Codes

1. *Nova Scotia (Worker's Compensation Board) v. Martin*, [2003] 2 S.C.R. 504; 231 D.L.R. (4th) 385, CB III, p. 639
2. *Paul v. British Columbia (Forest Appeals Commission)*, [2003] 2 S.C.R. 585; 231 D.L.R. (4th) 449, CB III, p. 656
3. *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] 1 S.C.R. 513; 266 D.L.R. (4th) 287, CB III, p. 667

CLASS #18 - THURSDAY, MARCH 11

VII. Statutory Appeals and Judicial Review: Overview

1. *ODSPA*, s.31, CB II, p. 410
2. *Crevier v. Quebec (Attorney General)*, [1981] 2 S.C.R. 220, 127 D.L.R. (3d) 1, CB III, p. 683
3. *Judicial Review Procedure Act*, R.S.O. 1990, c.J.1, as amended, CB III, p. 686

CLASS #19 - TUESDAY, MARCH 16

A. Standard of Review

1. Guy Regimbald, *Canadian Administrative Law* (Toronto: Lexis Nexis Canada Inc., 2008, 1st ed.), pp. 377-395 and 400-416, CB III, p. 690

CLASS #20 - THURSDAY, MARCH 18

2. *Dunsmuir v. New Brunswick*, 2008 SCC 9, CB I, p 52
3. *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, CB III, p. 727.

CLASS #21 - TUESDAY, MARCH 23

B. Discretion and Justiciability

1. Mullan, pp. 951-953, CB III, p. 777
2. *Roncarelli v. Duplessis*, [1959] S.C.R. 121, pp. 130-145, CB III, p. 780
3. *Multi-Malls Inc. v. Ontario (Minister of Transport & Communications)* (1976), 14 O.R. (2d) 49, 73 D.L.R. (3d) 18 (C.A.) , CB III, p. 791
4. *Operation Dismantle Inc. v. R.*, [1985] 1 S.C.R. 441, 18 D.L.R. (4th) 481 at pp. 481-494, CB III, p. 801

CLASS #22 - THURSDAY, MARCH 25

C. Parties and Standing

1. *Northwestern Utilities Ltd. v. City of Edmonton*, [1979] 1 S.C.R. 684, pp. 706-711, CB III, p. 831
2. *Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner)* (2005), 75 O.R. (3d) 309, pp. 315-324 (C.A.), CB III, p. 842
3. *Canadian Council of Churches v. Canada (Minister of Employment & Immigration)*, [1992] 1 S.C.R. 236, 88 D.L.R. (4th) 193, pp. 197-204, CB III, p. 822
4. *Sutcliffe v. Ontario (Minister of the Environment)* (2004), 69 O.R. (3d) 257 (C.A.), CB III, p. 851

CLASS #23 - THURSDAY, APRIL 1

D. Collateral Attacks

1. *R. v. Consolidated Maybrun Mines Ltd.*, [1998] 1 S.C.R. 706, 158 D.L.R. (3d) 193, pp. 206-214, CB III, p. 878

E. Exhaustion of Alternative Remedies/Prematurity

1. *Canadian Pacific Ltd. v. Matsqui Indian Band*, pp. 149-151, para. 54-60, CB II, p. 609
2. *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561, pp. 587-594, CB III, p. 857

CLASS #24 - TUESDAY, APRIL 6

F. Remedies

1. *Seaway Trust Co. v. Ontario* (1983), 41 O.R. (2d) 501 (Div. Ct.); 41 O.R. (2d) 532 (C.A.), CB III, p. 892
2. *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3, 232 D.L.R. (4th) 577, pp. 597-606, CB III, p. 900
3. *Mt. Sinai Hospital v. Quebec (Minister of Health and Social Services)*, [2001] 2 S.C.R. 281, 200 D.L.R. (4th) 193, pp. 223-242, CB III, p. 907

CLASS #25 - THURSDAY, APRIL 8

Exam Review